

Memorandum

To: DEPUTY DISTRICT DIRECTORS, Construction
AREA BRIDGE CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS
STRUCTURE REPRESENTATIVES

Date: February 21, 2002

File: Division of Construction
CPD 01-12

From: DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION - MS 44

Subject: Review of Differing Site Condition Disputes by a Management Review Committee

The purpose of this memorandum is to describe a revised procedure for the resolution of differing site condition (DSC) disputes. This procedure shall become effective immediately.

DSC disputes can be particularly complex, difficult to analyze, and require the consideration of various sources of information. In addition, DSC disputes often occur during the subsurface work performed early in a project, and, therefore, can be protracted disputes that are costly to the Department of Transportation (Department) when not resolved early. For these and other reasons, DSC disputes are a relatively common dispute during both the claim administration and arbitration phases of dispute resolution.

During the progress of the work, if conditions are encountered at the site that are believed to meet the standards of a DSC, then the party discovering those conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed. Upon written notification from the contractor, the resident engineer will investigate the conditions and determine if the conditions materially differ from the work under the contract and if an adjustment to the contract will be made. If the contractor does not agree with the resident engineer's determination and would like to pursue the issue further, Standard Special Provision 5-1.012, "Differing Site Conditions," requires the contractor to file a notice of potential claim (NOPC) within 15 days from the resident engineer's determination; otherwise the decision of the resident engineer shall be deemed to have been accepted by the contractor as correct.

In order to resolve DSC disputes earlier and to clarify the Department's position on the dispute, the attached process has been developed. This process will take place after the contractor files an NOPC regarding a DSC and will involve a management review committee early in the potential claim process. The management review committee will consist of the deputy district director, construction (chairperson), the structure construction area manager, and the construction coordinator. The process will consist of three primary steps:

1. Upon receipt of an NOPC pertaining to a DSC dispute, the resident engineer prepares a draft response to the NOPC and submits the response to the deputy district director, construction within five days.

2. The management review committee will review the resident engineer's draft response and provide any comments to the resident engineer within 10 days. If necessary to clarify information related to the DSC dispute, the management review committee or the contractor can initiate further communication with the other party during this period.
3. The resident engineer will incorporate any response from the management review committee into the NOPC response and submit the response to the contractor within five days.

For on-going contracts with the dispute review board (DRB) specification, the timeframe described above must be shortened from a total of 20 days to 15 days. The DRB specification will be revised to allow the resident engineer 20 days to respond in writing to the contractor's NOPC.

In addition to the personnel referenced above, other positions could be involved in the process of elevating DSC disputes by fulfilling their normal responsibilities in administering the contract, including construction engineers, construction managers, claims engineers and Engineering Services personnel. The construction engineer, as the supervisor of the resident engineer who must approve or concur with any contract change order, should be involved in the analysis of the DSC from the earliest stages. The construction manager should ensure adequate resources and training have been provided to successfully analyze and administer DSC disputes, and could also provide direct support and assistance to the construction engineer. The claims engineer could provide expertise in dispute resolution processes and in analyzing the DSC dispute for merit and cost. Finally, Engineering Services personnel could provide technical expertise in areas such as structure design and construction, materials engineering and testing, and structural foundations. For the resident engineer to consistently provide a response to the NOPC within 20 days, the appropriate personnel should be involved early in the process, including when the resident engineer is preparing a response to the contractor's initial DSC notice.

If you have any questions regarding this process, please call Scott Jarvis, Chief, Office of Contract Management at (916) 651-6284.

Original Signed by:

ROBERT PIEPLOW
Chief
Division of Construction

Attachment

c: SJarvis

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SJ:sf